

SERVED: April 1, 2003

NTSB Order No. EA-5033

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 1st day of April, 2003

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MARION C. BLAKEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	
v.)	Docket SE-16793
)	
MAAN HASSAN ZARIE,)	
)	
Respondent.)	
)	
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OPINION AND ORDER

The respondent has appealed from an order Administrative Law Judge Patrick G. Geraghty served in this proceeding on March 17, 2003.¹ That order granted the Administrator's motion for summary judgment on an emergency order she had issued on January 24, 2003, suspending, indefinitely, any airman certificate held by respondent, including his Airline Transport Pilot Certificate (No. 2293881), pursuant to section 61.18 of the Federal Aviation

¹A copy of the law judge's decision is attached.

Regulations ("FAR," 14 C.F.R. Part 61). The appeal will be denied.

Briefly stated, newly enacted FAR section 61.18 requires, on receipt of written notification by the Transportation Security Administration (TSA), that the Administrator suspend any airman certificate held by an individual who the TSA has determined poses a security threat. The law judge ruled, after considering essentially the same arguments that the respondent presses on appeal to us, that the Board does not have jurisdiction to review the validity of the TSA security threat assessment. Rather, the Board's authority is limited to determining whether the Administrator's action complies with the terms of her regulation, which is not in dispute in this matter. We see no need to expand at length upon the law judge's resolution of the question of jurisdiction, for we agree with his decision, which adequately discusses all of the relevant facts and legal issues.

The Board's authority to review the validity of or justification for a certificate action is not absolute, as respondent suggests, but is circumscribed, if not defined, by the regulatory context. For example, the Board is empowered to review the denial by the Administrator of a medical certificate, but that review is abbreviated where the reason for denial is the history or existence of a medical circumstance or condition, such as, for instance, cardiac valve replacement, that is per se disqualifying under the Administrator's medical regulations (see 14 C.F.R. Part 67). The issue in such a case is not whether the

Board agrees that the medical condition the individual is alleged to have is one that is not compatible with flight safety or should always be disqualifying. Rather, the issue is simply whether the evidence supports the Administrator's allegation.² If it does, our inquiry is ended, and the appeal fails.

Similarly, where, as in this matter, the Administrator has incorporated in a regulation a judgment about the eligibility for airman certification of a class of persons that another federal agency has identified as presenting a risk to aviation security, the Board has no authority to look behind that choice. Whether the Administrator's regulation represents a sustainable exercise of her rulemaking authority and whether the TSA's procedure for challenging a security threat judgment accord individuals all rights to which they are entitled as a matter of due process are questions reserved for the courts to decide.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied; and
2. The order of the law judge granting summary judgment for the Administrator and affirming the emergency order of suspension is affirmed.

²In these cases, it would be of no significance, for purposes of the Board's review authority, that reasonable medical minds might have differed over the necessity for an individual's valve replacement. The Board does not provide a forum either for second-guessing the Administrator's determination that those with replaced heart valves should not be certificated to fly or for re-litigating the wisdom of medical judgments of those who determined that the surgery was necessary.

ENGLEMAN, Chairman, and GOGLIA, CARMODY, ROSENKER, and HEALING, Members of the Board, concurred in the above opinion and order. Member CARMODY submitted the following concurring statement, in which Member GOGLIA joined.

The decision here does not reflect any judgment either on the process TSA, in concert with the Administrator, has put in place to enhance aviation security by de-certifying airmen who pose a security threat, or on TSA's threshold determination that the respondent in this case may present such a risk. The decision recognizes that the validity of the TSA assessment does not fall within the scope of our statutory charter.